

# Obama backs House Democrats' cave-in on Bush spying bill

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Senator Barack Obama, the presumptive Democratic presidential nominee, announced Friday that he would support the bill passed by the House of Representatives rubber-stamping the Bush administration's illegal program of widespread electronic surveillance and wiretapping.

The bill passed the House Friday and the Senate is expected to follow suit before the Fourth of July holiday. The Democratic-controlled Congress will thus mark Independence Day with a major attack on the democratic rights of the American people, justified, as so many other crimes of the past seven years, in the name of the struggle against "terrorism."

The House approved the FISA Amendments Act of 2008 (so named because it changes provisions in the 1978 Foreign Intelligence Surveillance Act) by a margin of 293 to 129. Speaker Nancy Pelosi and Majority Leader Steny Hoyer and 103 other Democrats sided with a near-unanimous Republican caucus (188-1) to pass the legislation.

The warrantless wiretapping program was initiated by the Bush administration after the attacks on the World Trade Center and the Pentagon on September 11, 2001. The White House set aside the previous legal framework for communications intercepts, which required the government to show probable cause to a judge of the special federal court established under the FISA law.

The National Security Agency began to intercept communications by issuing secret directives to the telecommunications companies, who delivered their entire databases of e-mail traffic and in many cases set up special facilities for NSA spying inside their own premises. The full extent of the surveillance remains secret, but it is likely that virtually all e-mail traffic in the United States is now subject to some form of government monitoring, either of the addresses used, the subject lines or the full contents.

The House bill grants retroactive immunity to telecommunications companies that collaborated in the warrantless wiretapping program, the key issue on which the legislation has been deadlocked for nearly a year. These corporations currently face at least 40 lawsuits charging them with illegal invasions of privacy. They can now have these suits dismissed simply by showing that they were responding to a written request from a government agency, whether that request was lawful or not.

The bill authorizes indiscriminate monitoring of all telecommunications and e-mail traffic into and out of the United States, without the previous requirement that a FISA court judge find probable cause that particular individuals are engaged in illegal activity. The FISA court will review only the general procedures for targeting—everyone telephoned from a particular cellphone, for example—and not the actual identities of those under surveillance.

While prohibiting generalized "reverse" targeting—i.e., if a terrorist suspect calls a pizza shop, this cannot be used to justify wiretapping everyone else who calls the same location—even this prohibition can be waived under a provision allowing the government to target anyone for up to seven days based on "exigent circumstances," without waiting for court review. Such surveillance can continue even if the FISA court rejects the request—something that has only happened a half dozen times in 30 years—while the government appeals the decision.

House Speaker Pelosi cited a provision declaring that wiretapping is conducted on the basis of the FISA law, and claimed that this was a rebuff to White House assertions that the president has inherent powers, under Article II of the Constitution, which makes him commander-in-chief of the armed forces, to ignore the FISA law and order any spying he deems necessary.

A Republican critic of the bill, Senator Arlen Specter of

Pennsylvania, said that there was nothing to prevent future warrantless wiretapping again without FISA court review, since the White House could simply declare that the president's inherent constitutional power overrides the new legislation as well.

Last August, when the legislation to expand federal wiretapping powers under FISA first came before Congress, Obama voted against the so-called Protect America Act, which granted a six-month authorization for the NSA wiretapping but did not resolve the immunity issue. In February, the Democratic congressional leadership allowed the PAA to expire, and both Obama and his main rival for the presidential nomination, Senator Hillary Clinton, supported that action.

In a statement last January, as he was posturing in Democratic presidential primaries as the most consistent opponent of the Bush administration, Obama declared, "No one should get a free pass to violate the basic civil liberties of the American people—not the President of the United States, and not the telecommunications companies that fell in line with his warrantless surveillance program. We have to make clear the lines that cannot be crossed."

Obama issued a statement Friday to explain why, after opposing the warrantless wiretapping and retroactive immunity for telecoms for nearly a year, he has now reversed himself. He begins by accepting the "war on terror" framework laid down by the Bush administration, which has used terrorism as the all-purpose pretext for massive incursions against civil liberties. "Given the grave threats that we face, our national security agencies must have the capability to gather intelligence and track down terrorists before they strike," Obama declares.

He then concedes the essential criminality of the White House policy: "There is also little doubt that the Bush Administration, with the cooperation of major telecommunications companies, has abused that authority and undermined the Constitution by intercepting the communications of innocent Americans without their knowledge or the required court orders."

Despite this admission, Obama claims that the latest bill is a "compromise that, while far from perfect, is a marked improvement over last year's Protect America Act. Under this compromise legislation, an important tool in the fight against terrorism will continue, but the President's illegal program of warrantless surveillance will be over."

The linguistic contortions cannot conceal the reality: the illegal spying by the Bush administration is only "over" because it has been legalized by the Democratic Congress. Obama & Co. are embracing legislation that declares the

wiretapping legal going forward, and retroactively immunizes those who violated the law since 2001.

The statement concludes on a note that seems calculated to placate those with illusions in Obama, but which upon serious consideration is quite ominous. Obama declares, "I support the compromise, but do so with a firm pledge that as President, I will carefully monitor the program, review the report by the Inspectors General, and work with the Congress to take any additional steps I deem necessary to protect the lives—and the liberty—of the American people."

In other words, he urges his audience to trust that a future Obama administration will exercise this arbitrary police-state power more judiciously than the Bush White House. But his pledge that he will "take any additional steps I deem necessary" amounts to demanding a blank check, and could easily justify even more sweeping inroads against democratic rights.

In embracing the war on terror and the claim that there must be a trade-off between security and democratic rights, Obama is echoing the reactionary arguments of the Bush White House. No section of the Democratic Party is prepared to tell the American people the truth: that the greatest threat to democratic rights comes not from a handful of Al Qaeda terrorists, but from the American state machine itself.

Osama bin Laden cannot overthrow the Constitution and the Bill of Rights and establish a police state in the United States. Only an American president or an American general can do that, at the head of a military-intelligence apparatus that already absorbs more than \$700 billion a year, more than the combined armies of every other country in the world.



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